

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION

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Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of

**AMERICAN BANKERS LIFE  
ASSURANCE COMPANY OF  
FLORIDA and AMERICAN  
BANKERS INSURANCE  
COMPANY OF FLORIDA,**

Respondents.

File No. UPA 2006-00013

OAH No.

**ORDER TO SHOW CAUSE AND  
STATEMENT OF CHARGES; NOTICE  
OF MONETARY PENALTY**

WHEREAS, the Insurance Commissioner of the State of California (hereafter, "the Commissioner") has reason to believe that AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA and AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA (hereinafter collectively "Respondents") has engaged in or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or practices set forth in the STATEMENT OF CHARGES contained herein, each falling within Section 790 et seq. of the California Insurance Code ("CIC"); and

WHEREAS, pursuant to CIC Section 701, the Commissioner of the State of California has reason to believe that Respondents are in default for failure to comply with the laws of this State regarding the governmental control of such insurers by the State, specifically CIC Section

1 779.19; and

2 WHEREAS, the Commissioner has reason to believe Respondents are in willful violation  
3 of two (2) previous Orders issued by the Commissioner; and

4 WHEREAS, the Commissioner believes that a proceeding with respect to the alleged acts  
5 of RESPONDENT would be in the public interest;

6 NOW, THEREFORE, and pursuant to the provisions of CIC §§ 779.22, 779.23 and  
7 790.05, RESPONDENT is ordered to appear before the Commissioner on **September 7, 2007 at**  
8 **Office of Administrative Hearings, 1515 Clay Street, Room 206, Oakland, California, at**  
9 **9:00 A.M.**, and show cause, if any cause there be, why the Commissioner should not issue an  
10 Order to revoke and/or suspend the Respondents' Certificates of Authority, and further, not issue  
11 an Order requiring Respondents to pay the penalty imposed by California Insurance Code Section  
12 790.035 and to cease and desist engaging in the methods, acts, and practices set forth in the  
13 STATEMENT OF CHARGES contained herein.

14  
15 **GENERAL STATEMENT**

16 1. Respondent, AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA  
17 (hereinafter individually "ABIC"), was from April 12, 1951, and now is, the holder of a  
18 Certificate of Authority (Certificate Number 1400-1) issued by the Insurance Commissioner of  
19 the State of California to act in the capacity of a Property and Casualty Insurer. Respondent,  
20 AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA (hereinafter  
21 individually "ABLAC"), was from January 6, 1961, and now is, the holder of a Certificate of  
22 Authority (Certificate Number 1646-9) issued by the Insurance Commissioner of the State of  
23 California to act in the capacity of a Life and Disability Insurer.

24 2. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,  
25 733, 736 and Article 6.5, Section 790.04 of the CIC and Title 10, Chapter 5, Subchapter 7.5,  
26 Section 2695.3(a) of the California Code of Regulations ("CCR"), the Commissioner made an  
27 examination of Respondents' claims practices and procedures in California. The examination  
28 covered Respondents' claims handling practices during the period June 1, 2004 to May 31, 2005.

1 The examination was made to evaluate, in general, Respondents' compliance with the contractual  
2 obligations in its insurance policy forms, its own procedures, and provisions of the CIC, the CCR,  
3 other insurance related statutes, and case law. The Examination was primarily conducted at  
4 Respondents' office in Miami, Florida. The Department examined 357 claims files. As a result  
5 of the examination, the Department identified 172 claims handling violations of CIC Sections  
6 779.19, 790.03(h), 880, 1872.4(a), 10172.5(a), 10172.5(c) and CCR §§ 2695.3, 2695.4, 2695.5,  
7 2695.6, 2695.7 and 2695.11. The pattern and frequency of the violations indicate a general  
8 business practice.

9 3. As a result of the Examination referenced in paragraph 2, the Commissioner, in his  
10 official capacity, now alleges that Respondents have violated provisions of the CIC and CCR, as  
11 follows:

12 **SPECIFIC VIOLATIONS:**

13 a) In 2 instances, ABIC failed to effectuate prompt, fair and equitable  
14 settlements of claims in which liability had become reasonably clear and attempted to settle a  
15 claim by making a settlement offer that was unreasonably low, in violation of CCR § 2695.7(g).

16 b) In 2 instances, ABLAC failed to effectuate prompt, fair and equitable  
17 settlements of claims in which liability had become reasonably clear and attempted to settle a  
18 claim by making a settlement offer that was unreasonably low, in violation of CCR § 2695.7(g).

19 c) In 26 instances, ABIC's claim file failed to contain all documents, notes,  
20 and work papers that pertain to the claim, in violation of CCR § 2695.3(a).

21 d) In 6 instances, ABIC failed to adopt and implement reasonable standards  
22 for the prompt investigation and processing of claims arising under insurance policies.  
23 Specifically ABIC failed to follow its depreciation schedule when settling personal effects claims,  
24 in violation CIC § 790.03(h)(3).

25 e) In 39 instances, ABIC failed to disclose all of the benefits, coverage, time  
26 limits or other provisions of the insurance policy, in violation CCR § 2695.4(a).

27 f) In 1 instance ABLAC failed to include a statement in its claim denial that,  
28 if the claimant believed the claim has been wrongfully denied or rejected, he or she may have the

1 matter reviewed by the Department of Insurance, in violation of CCR § 2695.7(b)(3).

2 g) In 11 instance ABIC failed to include a statement in its claim denial that, if  
3 the claimant believed the claim has been wrongfully denied or rejected, he or she may have the  
4 matter reviewed by the Department of Insurance, in violation of CCR § 2695.7(b)(3).

5 h) In 4 instances, ABIC's claims agent failed to immediately transmit notice  
6 of the claim to the insurer, in violation CCR § 2695.5(d).

7 i) In 4 instances, ABIC failed to provide a written basis for the denial of the  
8 claim, in violation CCR § 2695.7(b)(1).

9 j) In 3 instances, ABIC failed to conduct and diligently pursue a thorough,  
10 fair, and objective investigation of a claim, in violation of CCR § 2695.7(d).

11 k) In 3 instances, ABLAC failed to conduct and diligently pursue a thorough,  
12 fair, and objective investigation of a claim, in violation of CCR § 2695.7(d).

13 l) In 2 instances, ABIC failed to maintain claim data that are accessible,  
14 legible and retrievable for examination, in violation of CCR § 2695.3(b)(1).

15 m) In 2 instances, ABIC failed, upon receiving proof of claim, to accept or  
16 deny the claim within 40 days, in violation of CCR § 2695.7(b).

17 n) In 2 instances, ABLAC failed to provide an explanation of benefits, in  
18 violation of CCR § 2695.11(b).

19 o) In 2 instances, ABIC failed to effectuate prompt, fair and equitable  
20 settlements of claims in which liability had become reasonably clear, in violation of CIC §  
21 790.03(h)(5).

22 p) In 1 instance, ABLAC failed to respond to communications within 15  
23 calendar days, in violation of CCR § 2695.5(b).

24 q) In 1 instance, ABLAC failed to respond to acknowledge notice of a claim  
25 within 15 calendar days, in violation of CCR § 2695.5(e)(1).

26 r) In 1 instance, ABIC failed to provide thorough and adequate training  
27 regarding these regulations to all its claims agents, in violation of CCR § 2695.6(b).

28 s) In 1 instance, ABIC failed to maintain a copy of the certification required

1 by CCR § 2695.6(b)(1), (2) or (3) at the principal place of business.

2 t) In 27 instances, ABIC designated a creditor as a claims administrator,  
3 willfully violating CIC § 779.19 and the Orders of the Commissioner dated September 4, 1998  
4 and November 24, 2004, attached herein and incorporated by reference as Exhibit s A and B.

5 u) In 14 instances, ABLAC failed to pay interest on life claim settlements, in  
6 violation of CIC §10172.5(a).

7 v) In 14 instances, ABLAC failed to notify the beneficiary of the specific rate  
8 of interest paid on the death benefit, in violation of CIC §10172.5(c).

9 w) In 3 instances, ABIC failed to conduct business in its own name, in  
10 violation of CIC § 880.

11 x) In 1 instance, ABIC failed to report a claim that appeared to be fraudulent  
12 to the Bureau of Fraudulent Claims, in violation of CIC § 1872.4(a).

### 13 14 **PRIOR EXAMINATIONS**

15 4. Prior to the Examination referenced in paragraph 2 (covering the period of June 1,  
16 2004 through May 31, 2005), an Examination of Respondents was conducted for the period of  
17 October 29, 1996 to November 30, 1997. This examination uncovered the companies' practice of  
18 permitting creditors to act as claim agents for the Respondents, a violation of California Insurance  
19 Code Section 779.19. In lieu of a hearing on the matter, negotiations between the Department and  
20 Respondents followed and a Stipulation and Waiver was signed on or about July 21, 1998  
21 (Department File Nos.: SAC 8584-AP and SAC 8585-AP). Among other items, Respondents  
22 specifically stipulated that they allowed many of their insured creditors to settle and adjust the  
23 claims filed under the group credit insurance policies issued to them, in violation of CIC Section  
24 779.19 and CCR Section 2248.3(c). The Stipulation and Waiver was adopted by Order of the  
25 Commissioner on September 4, 1998, a copy of which is attached herein and incorporated by  
26 reference as Exhibit A. Respondents were specifically ordered to cease and desist from allowing  
27 insured to settle and adjust claims and to settle and adjust all claims filed under any credit  
28 insurance policy issued by Respondents themselves, or alternatively to hire a licensed California

1 adjuster to perform the claims adjustment;

2         5. Also prior to the Examination referenced in paragraph 2, an Examination of  
3 Respondents was conducted for the period of January 31, 1998 through December 31, 1998. This  
4 examination also uncovered the companies' continued practice of permitting creditors to act as  
5 claim agents for the Respondents, a violation of California Insurance Code Section 779.19. In  
6 lieu of a hearing on the matter, negotiations between the Department and Respondents followed  
7 and a Stipulation and Waiver was signed on or about November 20, 2003 (Department File Nos.:  
8 NC 03029026 and UPA 03029036). Among other items, Respondents stipulated that the  
9 continued practice of allowing their insured creditors to settle and adjust the claims filed under  
10 the group credit insurance policies issued to them was not only a violation of violation of CIC  
11 Section 779.19 and CCR Section 2248.3(c), but a subsequent violation of the prior Order issued  
12 by the Commissioner (See Exhibit A). The Stipulation and Waiver was adopted by Order of the  
13 Commissioner on November 24, 2004, a copy of which is attached herein and incorporated by  
14 reference as Exhibit B. Respondents were specifically ordered to cease and desist from allowing  
15 insured to settle and adjust claims and to settle and adjust all claims filed under any credit  
16 insurance policy issued by Respondents themselves, or alternatively to hire a licensed California  
17 adjuster to perform the claims adjustment;

18  
19                   **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**  
20                   **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. Seq**  
21

22         6. The facts alleged above in Paragraphs 1 through 3 constitute grounds, under CIC §  
23 790.05, for the Insurance Commissioner to order RESPONDENTS to cease and desist from  
24 engaging in such in such unfair acts or practices and to pay a civil penalty not to exceed five  
25 thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to  
26 exceed ten thousand dollars (\$10,000) for each act as set forth under Section 790.035 of the  
27 California Insurance Code.

28         7. The facts alleged in Paragraphs 1 through 5 show that RESPONDENTS have

1 failed to carry out its contracts in good faith, constituting grounds for the Insurance  
2 Commissioner to suspend the Certificate of Authority of RESPONDENT for a period not to  
3 exceed one year pursuant to CIC § 704(b).

4 8. The facts alleged in Paragraphs 3 through 5 show that Respondents willfully  
5 violated 2 previous Orders issued by the Commissioner and constitute grounds to suspend  
6 Respondents Certificate of Authority pursuant to CIC Section 779.22 and provisions of the  
7 Orders themselves.

8  
9 **PETITION FOR DISCIPLINE AND ORDER**

10 WHEREFORE, Petitioner prays for judgment against RESPONDENT as follows:

11 1. An Order to Cease and Desist from engaging in the methods, acts,  
12 and practices set forth in the STATEMENT OF CHARGES as set forth above;

13 2. For acts in violation of Insurance Code Section 790.03 and the  
14 regulations promulgated pursuant to Section 790.10 of the Insurance Code, as set forth  
15 above, a civil penalty not to exceed five thousand dollars (\$5,000) for each act or, if the act  
16 or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each  
17 act;

18 3. Pursuant to CIC 701, 407(b), 779.22 and 779.23, and repeated  
19 violation of a previous Order of the Commissioner, SUSPENSION of Respondents'  
20 Certificate of Authority.

21  
22 Dated: May 22, 2007

STEVE POIZNER  
Insurance Commissioner

23  
24 By \_\_\_\_\_/s/\_\_\_\_\_  
25 Teresa R. Campbell  
26 Senior Staff Counsel  
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